

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed July 8, 2008. At the time of the Final Office Action, Claims 74-75, 77-80, 82-83, 85-88, 90-91, 93-96, 98-99, 101-104, and 106-113 were pending in the Application and stand rejected. Applicant amends several claims without prejudice or disclaimer. The amendments to these claims are not the result of any Prior Art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 103 Rejection

The Examiner maintains his rejection regarding Claims 74-75, 79, 82-83, 87, 90-91, 95, 98-99, and 103 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,076,107 issued to Chen et al. (hereinafter "*Chen*") in view of U.S. Patent No. 6,151,630 issued to Williams (hereinafter "*Williams*") and further in view of U.S. Publication No. 2001/0047456 issued to Schrobenuhauzer et al. (hereinafter "*Schrobenuhauzer*"). Claims 77-78, 80, 85-86, 93-94, 101-102, and 106-109 stand rejected as being unpatentable over *Chen* in view of *Williams* in view of *Schrobenuhauzer* and further in view of U.S. Patent No. 6,442,651 issued to Crow et al. (hereinafter "*Crow*"). Claims 80, 88, 96, 104, and 110-113 stand rejected as being unpatentable over *Chen* in view of *Williams* in view of *Schrobenuhauzer* and further in view of Murray, James D., "Windows NT SNMP," O'Reilly & Associates, Inc., January 1988: First Edition, pp. iv, 59-61 (hereinafter "*Murray*").

Applicant respectfully reminds the Examiner that to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.¹

¹ See M.P.E.P. §2142-43.

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each and every claim limitation of the Independent Claims. For example, with respect to Independent Claim 74, no reference of record provides for *"...the pattern further comprises a periodicity of the network management data requests contained in the pattern, and wherein the network management data request is a Simple Network Management Protocol (SNMP) request."* It should also be noted that there are several other missing elements of Independent Claim 74 (e.g., the cache of prefetched network management data, the combination of the two determination steps, etc.), but Applicant has elected not to Appeal these issues in an effort to expedite the prosecution of this case. Returning to the missing limitations identified in this Response, no element addresses the periodicity of the network management data requests, nor does any reference account for these requests in an SNMP environment. These important limitations are provided for in Independent Claim 74, but no reference of record includes such elements.

For at least these reasons, Independent Claim 74 is easily allowable over any cited reference, or combination of references. The other Independent Claims recite limitations similar, but not identical, to those recited in Independent Claim 74. Therefore, these claims are also allowable, for example, for the same reasons as identified above. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

It is also worth noting that, even if all elements of the claims were disclosed in various prior art references, which is certainly not the case here as discussed above, the claimed invention taken as a whole still cannot be said to be obvious without some reason why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention.

The controlling case law, rules, and guidelines repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the

M.P.E.P. states, "The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142.

The U.S. Supreme Court's recent decision in *KSR Int'l Co. v. Teleflex, Inc.* reiterated the requirement that Examiners provide an explanation as to why the claimed invention would have been obvious. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). The analysis regarding an apparent reason to combine the known elements in the fashion claimed in the patent at issue "should be made explicit." *KSR*, 127 S. Ct. at 1740-41. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* at 1741 (internal quotations omitted).

The new examination guidelines issued by the United States Patent and Trademark Office ("PTO") in response to the *KSR* decision further emphasize the importance of an explicit, articulated reason why the claimed invention is obvious. Those guidelines state, in part, that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57528-29 (Oct. 10, 2007) (internal citations omitted). The guidelines further describe a number of rationales that, in the PTO's view, can support a finding of obviousness. *Id.* at 57529-34. The guidelines set forth a number of particular findings of fact that must be made and explained by the Examiner to support a finding of obviousness based on one of those rationales. *See id.*

For at least these reasons, all of the pending claims have been shown to be allowable as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

The Request for Continued Examination \$810 large entity fee is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account No. 50-4889 authorization. It is believed that no other fee is due at this time. If this is incorrect, please apply any other charges or credits to deposit account 50-4889.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at (214) 823-1241.

Respectfully submitted,

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